

## Message Text

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DRAFTED BY L:OTJOHNSON:KP

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P 272323Z SEP 74

FM SECSTATE WASHDC

TO AMEMBASSY TOKYO PRIORITY

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EO 11652: NA

TAGS: SCUL JA

SUBJECT: JAPAN FOUNDATION AWARD FOR SENATOR FULBRIGHT

REF: TOKYO 12453

1. DEPARTMENT LEGAL ADVISER HAS INFORMED SENATOR FULBRIGHT THAT HE MAY NOT LEGALLY ACCEPT JAPAN FOUNDATION AWARD. FOLLOWING IS TEXT OF LETTER SENT TO SENATOR EXPLAINING BASIS OF DECISION. (FULBRIGHT HAS SUPPLIED JAPAN FOUNDATION REP WITH COPY OF LETTER AND HAS ASKED THAT WE NOT MAKE FURTHER DISTRIBUTION OF LETTER. ACCORDINGLY, FOLLOWING IS SUPPLIED ON FYI BASIS.)

2. FYI QUOTE THE OFFICE OF THE LEGAL ADVISER OF THE DEPARTMENT OF STATE HAS CAREFULLY CONSIDERED YOUR REQUEST FOR A LEGAL OPINION ON THE LEGITIMACY OF YOUR ACCEPTANCE OF AN AWARD FROM THE JAPAN FOUNDATION. WE UNDERSTAND THIS AWARD WOULD CONSIST OF A CASH PAYMENT OF APPROXIMATELY \$16,000 AS WELL AS TRAVEL EXPENSES TO AND FROM JAPAN. YOUR SPECIFIC INQUIRY WAS WHETHER THERE IS ANY LEGAL BARRIER UNDER THE CONSTITUTION OR UNDER THE FOREIGN GIFTS AND DECORATIONS ACT OF 1966 TO THE ACCEPTANCE OF THIS AWARD. OUR CONCLUSION IS THAT THE ACCEPTANCE OF THIS AWARD AND  
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TRAVEL EXPENSES BY AN OFFICER OF THE UNITED STATES

GOVERNMENT WOULD BE PROHIBITED BY LAW.

THE CONSTITUTIONAL PROHIBITION ON THE ACCEPTANCE OF FOREIGN GIFTS IS FOUND IN ARTICLE 1, SECTION 9, CLAUSE 8, WHICH READS IN PERTINENT PART, AS FOLLOWS:

'... (NO) PERSON HOLDING ANY OFFICE OF PROFIT OR TRUST UNDER THEM (THE UNITED STATES) SHALL, WITHOUT THE CONSENT OF THE CONGRESS, ACCEPT ANY PRESENT, EMOLUMENT, OFFICE OR TITLE OF ANY KIND WHATEVER FROM ANY KING, PRINCE OR FOREIGN STATE.'

THE DRAFTING HISTORY OF THIS PROHIBITION INDICATES THAT ITS BASIC PURPOSE WAS TO PREVENT GOVERNMENT EMPLOYEES FROM BEING INFLUENCED BY FOREIGN GOVERNMENTS SEEKING TO GAIN FAVOR WITH THE UNITED STATES. THUS, IN CASE OF DOUBT, THE ESSENTIAL ISSUE IN DETERMINING WHETHER A PRESENT IS FROM A 'FOREIGN STATE', AND THEREFORE PROHIBITED, SHOULD BE 'WHETHER OR NOT THE OFFEROR IS ACTING ON BEHALF OF A FOREIGN GOVERNMENT FOR THE PURPOSE OF FURTHERING THE INTERESTS OF THAT GOVERNMENT. IN THIS CONNECTION, IT IS NOTED THAT THE TERM 'FOREIGN GOVERNMENT' IN THE FOREIGN GIFTS AND DECORATIONS ACT (5 USC SECTION 7342) IS DEFINED IN THAT ACT TO INCLUDE A FOREIGN GOVERNMENT AS WELL AS AN OFFICIAL AGENT OR REPRESENTATIVE THEREOF.

WE HAVE EXAMINED THE AVAILABLE DATA ON THE JAPAN FOUNDATION, IN PARTICULAR THE STATED PURPOSES OF THE FOUNDATION, ITS COMPOSITION AND ITS SOURCES OF FUNDS, IN ORDER TO DETERMINE WHETHER IT OPERATES AS A PRIVATE ORGANIZATION SERVING BASICALLY PRIVATE PURPOSES OR AS A GOVERNMENTAL OR SEMI-GOVERNMENTAL INSTRUMENTALITY SERVING ESSENTIALLY GOVERNMENTAL INTERESTS. A BROCHURE ISSUED BY THE FOUNDATION STATES THAT ITS PRIMARY PURPOSE IS TO PROMOTE INTERNATIONAL UNDERSTANDING AND TO ENHANCE JAPAN'S CONTRIBUTION THERETO. TO THIS END, IT STRIVES TO SUPPORT CULTURAL AND EDUCATIONAL FELLOWSHIP AND EXCHANGE PROGRAMS AND SIMILAR PROGRAMS DESIGNED TO STRENGTHEN JAPAN'S RELATIONS WITH FOREIGN COUNTRIES, INCLUDING THE LIMITED OFFICIAL USE

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UNITED STATES. OVERSEEING THE IMPLEMENTATION OF THESE PROGRAMS IS A BOARD OF DIRECTORS APPOINTED BY THE GOVERNMENT OF JAPAN. ALTHOUGH PRIVATE CONTRIBUTIONS ARE ACCEPTED, WE UNDERSTAND THAT THE FUNDING FOR THE ACTIVITIES DIRECTED BY THE BOARD COMES OVERWHELMINGLY FROM THE JAPANESE GOVERNMENT.

BASED UPON THESE FACTS, WE ARE FORCED TO CONCLUDE THAT AN

AWARD BY THE FOUNDATION TO AN OFFICER OF THE U.S.

GOVERNMENT MUST BE TREATED AS AN AWARD FROM THE GOVERNMENT OF JAPAN FOR PURPOSES OF THE CONSTITUTION AND THE FOREIGN GIFTS AND DECORATIONS ACT. ACCORDINGLY, WHILE YOU ARE AN OFFICER OR EMPLOYEE OF THE UNITED STATES YOU COULD NOT LAWFULLY ACCEPT THE AWARD. THIS PROHIBITION WOULD ALSO COVER ACCEPTANCE OF THE TRAVEL EXPENSES. ACCEPTANCE OF THE AWARD AND TRAVEL EXPENSES WOULD NOT, OF COURSE, BE PROHIBITED AFTER RESIGNATION OR RETIREMENT FROM THE GOVERNMENT SERVICE. END QUOTE  
END FYI.

3. JAPAN FOUNDATION REPRESENTATIVE IN WASHINGTON AND JAPANESE EMBASSY HAVE BEEN INFORMED OF DECISION. IT WAS POINTED OUT TO THEM THAT PROHIBITION ON ACCEPTANCE OF AWARD WOULD END ON FULBRIGHT'S DEPARTURE FROM SENATE IN JANUARY. EMBASSY MAY WISH EMPHASIZE THIS POINT IN DISCUSSIONS WITH FONOFF OR JAPAN FOUNDATION. WE UNDERSTAND THAT POSSIBILITY OF FULBRIGHT'S ACCEPTING AWARD NEXT YEAR WAS RAISED WITH SENATOR BY JAPAN FOUNDATION REP. FULBRIGHT INDICATED HE WOULD GIVE MATTER SERIOUS CONSIDERATION.

4. WE UNDERSTAND JAPAN FOUNDATION CONCERN THAT IT NOT BE CHARACTERIZED AS AGENCY OF GOJ. HOWEVER, FOLLOWING PRESS REPORTS THAT SENATOR FULBRIGHT WAS ILLEGALLY ACCEPTING AWARD, HE REQUESTED WRITTEN OPINION OF LEGAL ADVISER ON THE MATTER. GIVEN FUNDING AND PURPOSES OF JAPAN FOUNDATION, AND ITS OTHER LINKS TO GOJ, WE COULD NOT AVOID CONCLUSION STATED IN LETTER.

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